IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 17826 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE JAYANT PATEL

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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DESAI MAGANBHAI LILABHAI - Petitioner(s)
Versus
THE DISTRICT COLLECTOR & 5 - Respondent(s)

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Appearance :
MR RS SANJANWALA for Petitioner(s) : 1,MS SS SANJANWALA for Petitioner(s) : 1,
NOTICE SERVED BY DS for Respondent(s) : 1 - 3,5 - 6.
UNSERVED-EXPIRED (N) for Respondent(s) : 4,
GOVERNMENT PLEADER for Respondent(s) : 5,

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CORAM : HONOURABLE MR.JUSTICE JAYANT PATEL

Date : 29/01/2007

ORAL JUDGMENT

1. Rule. Mr. Chayya, learned AGP waives service of rule for respondent Nos. 1,2,5 & 6. So far as respondent No.4 is concerned, he has expired but

it may be recorded that before the lower authority, respondent No.4 had made no representations in the proceedings before the lower authorities.

2. With the consent of the learned advocates appearing for both the sides, the matter is finally heard today.

3. The short facts of the case are as under:

3.1 One Thakore Chanduji Khodaji, respondent No.3 herein, was holding agricultural land at village Baliyasan of Block No.366 admeasuring 0.72.84 Hectare Are and the said land was with the restriction as provided under Section 43 of the Bombay Tenancy and Agricultural Lands Act (hereinafter referred to as “the restricted tenure”).

3.2 The application was made by the said Thakore Chanduji Khodaji to the Prant Officer, Mehsana for rejecting the restriction and to convert the land as unrestricted tenure. On 30.07.1996, the permission came to be granted on payment of 60 times revenue and the restriction for new tenure were lifted and the condition provided was that the land will be sold to the another agriculturist and that before converting the land for NA use, the prior permission of the District Collector would be required and the premium will be

required to be paid.

3.3 It appears that the petitioner thereafter, purchased the land by Registered Sale Deed No. 2747 dated 06.08.1996. The revenue entry based on the said Registered Sale Deed also came to be mutated being No. 1233 dated 28.09.1996 and the petitioner continued to hold the property. It appears that thereafter, in July 2002, the report came to be submitted by Prant Officer to the District Collector on the basis that the proceedings for breach of the conditions of the restricted tenure were pending and thus, proceedings were not regularised and in the meantime, the restriction came to be lifted in July 1996 and therefore, it was recommended for review of the order passed on 30.07.1996.

3.4 The District Collector based on the said proposal/report, initiated action under Section 211 of the Bombay Land Revenue Code and ultimately, vide order dated 06.01.2005, set aside the order dated 30.07.1996 and directed the Prant Officer to take appropriate decision in the proceedings for breach of the condition and he also directed for review of the Entry No. 1233. It appears that the petitioner carried the matter in revision before the State Government against the order of the Collector and on 20.07.2006, the State Government dismissed the revision and confirmed the order

of the District Collector and it is under these circumstances, the petitioner has approached to this Court by preferring the present petition.

4. Heard Mr. R.S. Sanjanwala with Mr. S.S. Sanjanwala for the petitioner and Mr. Chayya, learned AGP for the respondent State Authorities.

5. It may be recorded that when this Court considered the matter for first time on 22.08.2006, the following order came to be passed:

> *"Draft amendment granted.*
>
> *Mr. Sanjanwala, learned counsel for the petitioner states that the petitioner is agreeable to pay the premium as may be fixed on the basis of the valuation of the land on the date when the transaction took place in the year 1996 and also interest at the rate of 12% per annum on that amount till payment.*
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> *In view of the above,* ***Notice*** *returnable on 4th September, 2006. By ad interim order, status quo qua the possession and title of the land shall be maintained."*

6. The affidavit-in-reply has been filed thereafter, in which it is inter alia stated that the valuation of the land on the date when the transaction took place was Rs. 130/- per sq.mtr. as per the valuation made by the District Valuation Committee and the interest is

also calculated.

7. Mr. Sanjanwala, learned counsel appearing for the petitioner reconfirmed the declaration made on behalf of the petitioner that the petitioner was and is ready to pay the premium with interest @ 12% p.a. as declared before the Court on 22.08.2006 if this Court is inclined to consider the matter for interfering with the order passed by the Collector and its confirmation thereof by the State Government.

8. It may be recorded that this Court in its decision dated 24.01.2007 in Special Civil Application No. 10520 of 2006, while considering more or less the similar situation for the disposal of the land as restricted tenure and the initiation of the proceedings by the authority at a later stage when the situation became irreversible, inter alia observed at para 9 as under:

> *"As such, if the matter is strictly examined and the conduct of the Authority is considered, it appears that initially the land was shown in the revenue record as that of old tenure and at the time when the transaction took place between the original holder Jetha Harji and Reva Harji with one Rupa Bhana and Aja Bhana on 23.10.1973, such transaction is not objected nor any material is placed on record to show that the objection was raised or that the transaction was approved with restriction. Not only that but, on 21.04.1987 when the APMC purchased the land which is a portion of the land bearing Survey No. 105 from Harijan*

Bhana, no objection is raised by the Government. Such objection also was not raised when the land was converted for NA by APMC and for which, permission came to be granted to the APMC by the District Panchayat in April 1991. Therefore, it can be said that the petitioner acted bonafide on 15.12.2003 when he purchased the property as if the land is old tenure land. Not only that, but based on the Registered Sale Deed, the entry also came to be mutated and the concerned authority at no point of time raised such objection. The fact remains that the permission actually came to be granted for NA use on 09.08.2004. by the District Panchayat and thereafter, the objection has been raised that the land is a restricted tenure."

The Court further observed at para 10 as under:

"Even if the land is a restricted tenure land, the transfer is not completely barred as per the provisions of Section 43 of the Act but the requirement is that the prior permission of the District Collector is required to be obtained and the necessary premium is required to be paid to the Government. No proceedings are initiated under the Tenancy Act for declaration of the transaction as invalid being in breach of the provisions of Section 43 and only at the stage of NA use, such objections are raised. Therefore, when the transaction is already entered into and the transaction could have been entered into with the prior permission of the District Collector, if the objections are raised at the stage when the land is already converted into NA use, it would be just and proper for the authority to take a pragmatic view inasmuch as by recovery of the premium with some penalty, the order of NA use could be maintained and the situation could not have been created to the irreversible extent."

It was further observed at para 11 as under:

> “In my view, as per the declaration recorded hereinabove, when the petitioner is ready to pay the requisite premium to the Government with interest @ 12% from the date of the transaction, the matter can be considered by the District Collector for granting post facto permission and it can also be considered by the State Government for maintaining the order of NA use and if such a power is exercised, it would not cause any prejudice to the revenue and the matter can be put to an end for all time to come.”

At para 12, it was inter alia observed by the Court that interest @ 12% p.a. will take care of the situation for compensatory measure, which normally would be the bank rate of interest of approximately 9% per annum and 3% should be towards the penal measure and the Court observed that if the interest is ordered to be paid to the Government @ 12% p.a. from the date of transaction until the actual payment, it will balance the rights of the petitioner qua the land in question and the interest of the Government so far as the calculation of premium is concerned.

9. If the matter is examined in light of the aforesaid observations of this Court, as such, the petitioner has acted upon the permission granted by the Revenue Authority on 30.07.1996, and has altered his right to the extent of purchasing of the land by paying consideration

to the holder of the land. If the matter is strictly examined in light of the statutory provisions, it can be said that on the date when the petitioner purchased the property, the restriction over the land were not in existence and the petitioner acted bonafide. Not only that, but based on the said Registered Sale Deed, when the Revenue Entry came to be mutated on 28.09.1996 vide No. 1233, no objection was raised. It is only after the period of about more than 6 years, the report is made for first time by the Prant Officer that the proceedings were pending for breach of the condition of grant against the original holder of the land/vendor and therefore, the order dated 30.07.1996 be taken in review. At the time when the report was made by the Prant Officer and when the power came to be exercised by the District Collector, as such, the situations had become irreversible. Therefore, if the matter is strictly examined in accordance with law, the principles of delay and laches may operate in exercising the power. However, with a view to protect the rights of the bonafide purchaser and in any event, even if the land is treated as that of restricted tenure on the date when the transaction of sale had taken place, at the most, such transaction could have been entered into with the permission of the Collector, which is being granted on payment of the requisite premium to the State Government. It

is not a matter where the land is sold by an agriculturist to non-agriculturist and therefore, if pragmatic is taken, the rights of the land holder vis-a-vis the rights of the Government can be balanced by directing for recovery of the premium with interest as compensatory measure and having some element of penalty and the rights of the parties can be finalised for all time to come.

10. As per the declaration made and recorded hereinabove, the petitioner has shown willingness to pay the premium as per the prevailing policy of the Government on the basis that the valuation of the land is 130 per sq. mtr. when the transaction took place and the petitioner has also shown willingness to pay the interest @ 12% p.a. from the date on which, the transaction took place until the actual payment.

11. Under these circumstances, I find that even if the matter is considered on the basis that the land was a restricted tenure, the Government at the most would be entitled to recover the premium and for the period after the date of transaction, if the interest is recovered @ 12 p.a., it would be just and proper on the part of the revenue to have the pragmatic approach. As observed earlier, there is a delay on the part of the authority in exercise of the power and the petitioner has altered his rights in the

meantime and the situations have become irreversible. Therefore, if the premium is recovered on the date of the valuation of the land when the transaction took place with reasonable interest @ 12% p.a., the same would not leave the room to either party to take undue benefit and the same would be rather imbalancing of the rights of the private citizen as against the State Government for recovery of the premium.

12. Even otherwise also when the parties have altered their position and the situation have become irreversible, no useful purpose would be served in allowing the proceedings to be continued for the alleged breach of the condition of grant, more particularly when subsequently the authority themselves have granted permission for lifting the restriction and for transfer and when the petitioner by paying consideration has purchased the property be Registered Sale Deed.

13. In view of the aforesaid I find that if the orders of the District Collector and its confirmation thereof by the State Government are set aside on the condition that the petitioner pays the requisite premium as per the prevailing police of the State Government on the basis of the valuation of the land as Rs. 130/- per sq. mtr. and the interest from the date of

transaction @ 12% p.a. from the date of the transaction till actual payment, the same would be just and proper.

14. Under the above circumstances, I find that the following directions shall met with the ends of justice:

1) The respondent No.1 District Collector, Mehsana, within a period of four weeks from the receipt of the order, will intimate to the petitioner the exact amount of premium to be paid by the petitioner on the basis of the valuation of the land as Rs. 130/- per sq.mtr. and shall also communicate the interest based on the amount of the premium @ 12% p.a. from the date of the transaction till the actual payment and shall give time to the petitioner to deposit the amount within a period of two weeks from the date of receipt of such intimation.

2) After the amount is deposited and paid by the petitioner to the State Government, the order passed by the District Collector and its confirmation thereof by the State Government shall stand quashed and set aside and shall not further operate.

15. The petition is allowed in terms of the aforesaid directions. Rule partly made absolute. Considering the facts and

circumstances, there shall be no order as to costs.

(JAYANT PATEL, J.)

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